



**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM**

**&**

**SHRI RAM LAL NEGI, JM**

**ITA No.125/Mum/2017 & ITA No.126/Mum/2017  
(Assessment Year :2009-10)**

**ITA No.143/Mum/2017 & ITA No.144/Mum/2017  
(Assessment Year: 2007-08)**

DCIT CEN CIR 7(3) R.No.655, 6 <sup>th</sup> Floor Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Mahavir Premises Pvt. Ltd., 216, Shah And Nahar Industrial Road Off. Dr. E. Moses Road, Worli, Mumbai – 400 018
<b>PAN/GIR No.AADCM5808Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Chaitanya Anjaria
Assessee by	Shri Vijay Mehta
<b>Date of Hearing</b>	<b>12/09/2018</b>
<b>Date of Pronouncement</b>	<b>23/10/2018</b>

**आदेश / ORDER**

**PER R.C.SHARMA (A.M):**

These are the appeals filed by the Revenue against the order of CIT(A)-49, Mumbai dated 31/10/2016 for A.Y.2007-08 & 2009-10 in the matter of imposition of penalty u/s.271D & 271E of the Income Tax Act, 1961.

2. At the outset, learned AR placed on record the order of the Tribunal dated 31/05/2018 in group concern of the assessee, wherein the Tribunal after considering the decision of Bombay High Court has deleted the similar penalty after observing as under:-

“5. We have considered rival contentions and carefully gone through the orders of the authorities below. We have deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by learned AR and DR during the course of hearing before us in the context of factual matrix of the case. We had also carefully gone through the orders of the Tribunal in the group cases of the assessee which was upheld by the Hon'ble Jurisdictional High Court as stated above.

6. From the record we found that AO has levied penalty u/s.271D for accepting loan by way of Journal entries. The Assessing Officer had placed reliance on the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Triumph International Finance (I) Ltd. (345 ITR 270) rendered on 12.06.2012. It is not disputed that in this judgment it was held that there was violation of the provisions of S. 269T of the Act in a case where the loan was repaid by way of a journal entry entailing levy of penalty u/s. 271E of the Act. However, at the same time it was also held that levy of penalty could be avoided on showing reasonable cause. In the premises, levy of penalty u/ss. 271D of the Act is not automatic, but the genuineness or otherwise of the reasons due to which repayment was made by journal entry has to be considered judiciously.

7. In the order reported as Lodha Builders (P) Ltd. v. ACIT [2014] 163 TTJ 778 (Mum), a bunch of appeals belonging to Lodha group (to which the present assessee belongs) involving identical issue, was disposed of by the co-ordinate Bench in which levy of similar penalties was held to be not sustainable as there was a reasonable cause, copies of which have been placed on record. In deciding the dispute in favour of the assessee, the Hon'ble Tribunal had considered and applied the ratio laid down by the Hon'ble jurisdictional High Court in the case of CIT v. Triumph International Finance (I) Ltd. (345 ITR 270).

8. The aforesaid order of the Hon'ble Tribunal was approved by the Hon'ble jurisdictions! High Court in their judgment and order dated 06.02.2018 in the case of CIT v. Ajinath Hi-Tech Builders Pvt Ltd. and others, copies of which have also been placed on record. In this case, it was also held that prior to the judgment in CIT v. Triumph International Finance (I) Ltd. (345 ITR 270), there were series of orders on this point holding that journal entry would not fall foul of S. 269SS of the Act. Since the judgment in CIT v. Triumph International Finance (I) Ltd. (345 ITR 270) was rendered on 12.06.2012, it was held, that the assessee could have had a bonafide belief prior to that date that there was no violation of S. 269SS of the Act in accepting loan by journal entry.

9. *While deciding the issue, the CIT(A) has also followed the decision of Jurisdictional High Court in case of group concern of the case. The facts and circumstances during the year under consideration are same, accordingly, we do not find any infirmity in the order of CIT(A) for deleting the penalty imposed u/s.271D by relying on the decision of Jurisdictional High Court in group case of the assessee.*

**10. *In the result, appeal of the Revenue is dismissed.***”

3. We had carefully gone through the orders of the authorities below as well as order passed by the Tribunal in the case of group concerns, wherein under similar facts and circumstances penalty imposed u/s.271D and 271E was held to be not leviable in terms of decision of Bombay High Court in case of Triumph International Finance (I) Ltd (supra). It was observed that there was a reasonable cause for squaring all the accounts through general entries. As the facts and circumstances in the appeals before us are parimateria with the facts and circumstances discussed by the Tribunal in its order dated 31/05/2018, respectfully following the order of the Tribunal in the case of group concern, we do not find any infirmity in the order of CIT(A) for deleting the penalty imposed u/s.271D and 271E of the Act.

**4. In the result all the appeals of the Revenue are dismissed.**

Order pronounced in the open court on this 23/10/2018

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 23/10/2018  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**